

Final Statement of Reasons:

Two-Year Licensing of Gambling Establishments and Key Employees CGCC-GCA-2007-R-3

California Code of Regulations
Title 4. Business Regulations
Division 18. California Gambling Control Commission
Chapter 6

Background

The California Gambling Control Commission (Commission) held a public hearing at 10:30 a.m. on Thursday, August 23, 2007, at 2399 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833-4231.

The initial public comment period for these proposed regulations was from July 6, 2007 until 5:00 p.m. on August 23, 2007.

The first 15-day change to these proposed regulations was noticed to the public on October 10, 2007. The close of this first 15-day public comment period was at 5:00 p.m. on October 25, 2007.

The second 15-day change to these proposed regulations was noticed to the public on December 11, 2007. The close of this second 15-day public comment period was at 5:00 p.m. on December 26, 2007.

The third 15-day change to these proposed regulations was noticed to the public on March 27, 2008. The close of the third 15-day public comment period was at 5:00 p.m. on April 11, 2008.

This Final Statement of Reasons is separated into two parts. Part A updates the Initial Statement of Reasons. Part B summarizes and responds to the comments received, and further updates the Initial Statement of Reasons for changes made during the three 15-day comments periods.

Part A: Updated Initial Statement of Reasons

The Initial Statement of Reasons, issued on July 6, 2007, is revised to read as follows:

The Gambling Control Act (Act)¹ provides the Commission with jurisdiction over the operation of gambling establishments in California.² The Act assigns the Commission with the responsibility of assuring that gambling licenses are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.³ The Act directs the Commission to issue licenses only to those persons of good character, honesty and integrity, whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state.⁴

In carrying out this mission, the Commission must deny a gambling license to any applicant who is disqualified under a list of various criteria that include felony convictions, misdemeanor convictions involving dishonesty or moral turpitude within a preceding 10-year period, and associations with criminal profiteering activity or organized crime.⁵ As a result, the Commission and the Division of Gambling Control (Division) have established license application and renewal processes for gambling establishments and their key employees that include detailed application forms and extensive applicant background investigations.⁶ Although necessary, these processes can be burdensome for the license applicant, and time consuming for the Commission and Division. As a result, to renew a gambling license or key employee license, the licensee is required to file a renewal application with the Commission no later than 120 days prior to the expiration of the license.⁷

In an effort to make the license renewal process less burdensome to the licensee and to provide the Commission and Division with critically needed time to process renewal applications and conduct background investigations,

¹ Business and Professions Code, sections 19800 through 19987

² Business and Professions Code, section 19811

³ Business and Professions Code, section 19823

⁴ Business and Professions Code, section 19857

⁵ Business and Professions Code, section 19859

⁶ California Code of Regulations, Title 4, sections 12342, 12343, 12344 and 12345

⁷ Business and Professions Code, subdivision (b) of section 19876

the Commission proposes to amend California Code of Regulations, Title 4, Chapter 6. This proposed action would replace the current one-year license term for gambling licenses and key employee licenses with a two-year term, and will align the annual payment of table fees with the annual submission of financial statements. In the process of establishing a two-year license term, this proposed action would also consolidate many current license application forms and amend other forms for clarity purposes.

Prior to the passage of Senate Bill 730 (2007 Stat. Ch. 438), the Act required gambling licenses and key employee licenses to be renewed either annually, or for a longer period that the Commission may set, not to exceed two years.⁸ Further, SB730 has modified the Act so that, on or after August 1, 2008, a license must expire 24 months (two years) after issue.⁹ These proposed regulations would replace the current annual license renewal period for gambling operations and key employees with a two-year renewal period.

To renew a license, the licensee must (120 days prior to expiration) complete and submit to the Commission an “Application for State Gambling License, CGCC-30 (Rev. 01-05)” or an “Application for Key Employee License, CGCC-031 Rev. 01-05”, whichever is applicable, and complete a “Renewal Supplemental Information for State Gambling/Key Employee License and Instructions to Renewal Applicants, DGC-APP. 017A (Rev. 12-04)”, and submit the applicable renewal fee.¹⁰ These forms can be burdensome to complete, as they require considerable background information about the applicant.

When received at the Commission, each renewal package must be reviewed for completeness. In the event that the renewal package is found to be incomplete, the licensee must be advised to submit the additional information or required fees.

Once the Commission is satisfied that the renewal application is complete, the package is forwarded to the Division for analysis and possible investigation.¹¹ Should the Division determine that further investigation is

⁸ Business and Professions Code, subdivision (a), of section 19876, as worded prior to the passage of SB730

⁹ Business and Professions Code, subdivision (a), of section 19876, as worded after the passage of SB730

¹⁰ California Code of Regulations, Title 4, subsection (a), of section 12344

¹¹ California Code of Regulations, Title 4, paragraph (3), of subsection (a), of section 12345

necessary regarding the background of one or more of the applicants in the package, the applicant may be required to submit additional fees to defer the cost of the investigation.¹² When its investigation is completed, the Division submits its recommendation concerning the renewal application to the Commission.¹³

The Commission will then consider the renewal application for approval or disapproval at a regularly scheduled public meeting.

Changing the license renewal period from one to two years will lessen the burden on licensees, will provide the Commission with the additional time needed to process license applications, and will provide the Division with critically needed additional time to perform the required background investigations of license applicants.

The Act requires the Commission to assure that licenses are not issued to, or held by unqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare. Further, the Act requires the Commission to assure that there is no material involvement with a gambling operation by unqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.¹⁴ In response to these responsibilities, the Commission and the Division have established in regulation various forms that request information from applicants that assists the Division in an investigation of the applicant's background and associations.¹⁵ These regulations will consolidate many of these forms into one form, thus simplifying the license application process for the applicant.

By relocating and consolidating information onto other forms, the Division has also eliminated the need for complex supplemental information forms to be submitted each time a license is renewed. As a result, these regulations would simplify the license renewal process by no longer requiring the *renewal* applicant to submit applicable supplemental information forms (DGC-APP-015A, 015B, 015C or 016A).

¹² California Code of Regulations, Title 4, subsection (d), of section 12344

¹³ California Code of Regulations, Title 4, paragraph (4), of subsection (a), of section 12345

¹⁴ Business and Professions Code, paragraphs (1) and (2), of subdivision (a), of section 19823.

¹⁵ California Code of Regulations, Title 4, subsection (a), of section 12342

These proposed regulations include a complete rewrite of Commission forms: “Application for State Gambling License, CGCC-030 (Rev. 01-05)” and “Application for Key Employee License, CGCC-031 (Rev. 01-05). The revisions to these forms include information that has in the past been requested on many other Division forms. As a result, these proposed regulations would abolish the following forms that will no longer be necessary:

- Renewal Supplemental Information for State Gambling/Key Employee License and Instructions to Renewal Applicants, DGC-APP. 017A (Rev. 12-04)
- Report of Annual Gross Revenues, DGC-APP. 018 (Rev. 09-03)
- Declaration of Compliance With The Requirement for Public Notice of Application for a Gambling License, DGC-LIC. 100 (Rev. 07-03)
- Instructions for Public Notice of an Application for a Gambling Establishment License, DGC-LIC. 102 (Rev. 07-03)
- Employee Work Permit Certification, DGC-APP. 019 (Rev. 09-03)
- Instructions to Applicants, DGC-APP. 007 (Rev. 12-04)

In the process of consolidating the above noted forms into one license application form, the Division found that form Public Notice of An Application for a Gambling Establishment License, DGC-LIC. 102A (Rev. 7-03) is no longer in use due to the moratorium against new gambling establishments.¹⁶ As a result, form DGC-LIC. 102A would be deleted from existing regulation by this action.

In addition to assuming the roles of many other Division forms, Commission forms CGCC-030 and CGCC-031 have been amended for clarity purposes. For example, the first page of the form has been changed to include an improved explanation as to the requirements for licensure of the various persons who may have an interest in a gambling operation, or for those who are considered key employees of a gambling operation. Further, these revised forms provide an improved explanation of the various Division forms that will be required as part of a license application package.

In the process of consolidating the above noted forms into one license application form, the Division found that many other forms relating to gambling license applications and key employee license applications could be refined, clarified or simplified to produce a better understanding from the

¹⁶ Business and Professions Code, section 19963.

applicant. As a result, these proposed regulations would amend the following Division forms:

- Cardroom Applicant Supplemental Information for State Gambling License, DGC-APP. 015A (Rev. 09-04)
- Cardroom Applicant- Business Supplemental Information for State Gambling License, DGC-APP. 015B (New 09-04)
- Gambling Establishment Supplemental Information for State Gambling License, DGC-APP. 015C (New 09-04)
- Cardroom Key Employee Supplemental Information for State Gambling License, DGC-APP. 016A (Rev. 09-04)
- Authorization to Release Information, DGC-APP. 006 (Rev. 09-04)
- Instructions to Applicant's Spouse, DGC-APP. 010 (Rev. 12/04)

Current regulations require that an applicant for a State Gambling License submit to the Division a completed Internal Revenue Service (IRS) form entitled "Tax Information Authorization (IRS 8821, Rev. April 2004).¹⁷ This form authorizes the Division to obtain copies of federal tax returns that have been submitted to the IRS by the license applicant. The information is utilized by the Division to verify the applicant's income. When the Division receives this authorization form, another IRS form, (Request for Transcript of Tax Return, IRS 4506-T, Rev. April 2006), must be completed to request a transcript of the applicant's tax return(s). IRS form 4506T already has a section printed on it where the applicant can request that a copy of their transcript(s) be sent to a third party, in this case the Division. To make the process simpler and quicker for both the applicant and the Division, these regulations will change the required form from the IRS 8821 to the IRS 4506-T. This will help to speed-up the process by utilizing the form that directly causes the tax return transcript(s) to be sent to the Division.

These proposed regulations would also add a new Division form that will request supplemental background information from trust-related gambling license applicants. This new form is entitled, "Trust Supplemental Background Investigation Information, DGC-APP-143 (New 03/08)". It requests information that is unique to a trust, such as the identity of the trust, trustee, trustor and beneficiary. The purpose of this new form 143 is to identify those individuals who must be licensed when a trust owns all or part of a gambling establishment. This new form is in part authorized by Business and Professions Code, subdivision (e) of section 19852.

¹⁷ California Code of Regulations, Title 4, paragraph (28), of subsection (a), of section 12342, and paragraph (1), of subsection (a), of section 12343

The Act requires the holder of a gambling license to pay an annual fee that is set by a schedule based on the number of tables authorized by the license, or by their gross revenues, whichever fee amount is greater.¹⁸ Accordingly, these regulations will base the annual fee on the number of tables or revenues for the licensee's preceding fiscal year. These annual fees would be paid on the same schedule as that specified for the annual submission of financial statements.¹⁹ This means that table fees and financial statements would be due at the same time each year, both due 120 days following the end of the licensee's fiscal year. As a result, these changes will help to lessen the burden on the holder of a gambling license, by placing two annual processes onto the same schedule.

To aid in the calculation of the annual table fee, the Commission proposes to establish a new form, "Gambling Establishment Annual Fee Calculation, CGCC-028 (New 08/07)". This new form will help licensees calculate their annual table fee and gambling addiction fee, and will be submitted annually to the Commission along with their fees.

Current regulations allow the owner licensee of a gambling establishment to apply to operate more tables than is regularly authorized, on either a temporary or permanent basis.²⁰ As part of these regulations, the applicant is required to submit an application fee to the Commission, and a review deposit to the Division.²¹ Both of these fees are deposited into the same state fund (The Gambling Control Fund), and are available to both the Commission and the Division, upon appropriation by the Legislature.²² The Division has recently authorized the Commission to receive the review deposit on its behalf. As a result, these regulations simplify the process by having the applicant submit both fees directly to the Commission, along with their additional table fees, all with a single payment. To accommodate this new single payment method, these regulations amend the following two Commission forms:

¹⁸ Business and Professions Code, subparagraph (B), of paragraph (2), of subdivision (b), and subdivisions (c) and (d) of section 19951

¹⁹ See California Code of Regulations, Title 4, paragraph 4, of subsection (b), of section 12400 and subsection (b), of section 12403

²⁰ California Code of Regulations, Title 4, subsection (a), of section 12358, and subsection (a), of section 12359

²¹ California Code of Regulations, Title 4, paragraph (2), of subsection (a), of section 12358, and paragraph (2), of subsection (a), of section 12359

²² Business and Professions Code, subdivision (b), of section 19950

- Request for a Certificate to Operate Additional Tables on a Temporary Basis, CGCC-024 (Rev. 01-07)
- Application for Additional Authorized Permanent Tables, CGCC-027 (Rev. 07-06)

Finally, for purposes of clarity, these regulations will add a definitions section to Chapter 6 of Division 18 of Title 4, will divide the chapter into three articles, establish basic license requirements for gambling establishments and key employees, and make other minor conforming changes.

The particulars of this regulation package are as follows:

In general, chapter 6 has been reorganized into three separate articles. Article 1 contains definitions and general provisions. Article 2 is devoted to those sections that deal with licensing matters, while Article 3 pertains to table fees and requests for additional tables.

For clarity purposes, subsection (a) of section 12335 has been added which applies the definitions in section 12002 to Chapter 6. Section 12002 is the general definitions section that applies to all of Division 18, of which Chapter 6 is a part. In addition to applying definitions for specific terms, section 12002 also applies the definitions in Business and Professions Code section 19805 to all of Division 18. It is important that this connection be made, as many of the terms defined in Business and Professions Code section 19805 are used in Chapter 6.

For clarity purposes, these regulations will add subparagraph (1) of subsection (b) of section 12335, which will define the term “Table Fee” as meaning those fees established by Business and Professions Code, paragraph (2), subdivision (b) of section 19951.

Subsection (a) of section 12340 has been added to Chapter 6, which establishes a basic licensing requirement for gambling operations. Further, subsection (b) of section 12340 has been added to Chapter 6, which establishes a basic licensing requirement for key employees of gambling operations. Finally, subsection (c) of section 12340 has been added which establishes a two-year term for a state gambling license and key employee license. Business and Professions Code, section 19876(a) requires that licenses renewed after August 1, 2008 expire 24 months after the license

issue date. Business and Professions Code sections 19850, 19851, 19852 and 19876 provide the authority for establishing section 12340.

The content of forms DGC-APP. 017A, DGC-APP. 018, DGC-LIC. 100, DGC-LIC. 102, DGC-APP. 019 and DGC-APP. 007 has been incorporated into existing application forms for state gambling licenses (CGCC-030) or key employee licenses (CGCC-031). As a result, the regulatory provisions that incorporate these no longer used forms are being repealed. California Code of Regulations, Title 4, paragraphs (8), (15), (16), (17), (20), and (22) of subsection (a), of section 12342 are being deleted by these proposed regulations. Also, Form DGC-LIC. 102A is no longer in use by the Division. The regulatory provision that incorporates this form (California Code of Regulations, Title 4, paragraph (18) of subsection (a), of section 12342) is being deleted by these proposed regulations. As a result of these deleted paragraphs, other paragraphs within subsection (a) of section 12342 have been renumbered for conformity purposes. Likewise, paragraphs (1) and (2) of subsection (a) of section 12342, paragraph (1) of subsection (a) of section 12343, paragraph (1) of subsection (a) of section 12344, and paragraph (2) of subsection (a) of section 12345 have been amended to reflect new revision dates for forms CGCC-030 and CGCC-031. In these same sections, the title of form CGCC-031 has also been amended to “Application for Gambling Establishment Key Employee License” to better reflect that the license is issued to key employees of a specific gambling establishment. Finally, the words “and Renewal” have been deleted from the title of section 12342. As a result of the new consolidated forms (CGCC-030 and CGCC-031) and the abolishment of many Division forms, section 12342 will now apply only to initial license applications.

As a result of the passage of Senate Bill 289 (2007 Stat. Ch. 294), an urgency statute, the renewal section of form CGCC-030 would be modified to include the question:

“Have you acquired or increased a financial interest in a business that conducts lawful gambling outside the state since last filing a State Gambling License application?”

Likewise, as a result of SB289, the renewal section of form CGCC-031 would be modified to include the question:

“Have you acquired or increased a financial interest in a business that conducts lawful gambling outside the state since last filing a Key Employee License application?”

SB 289 has added Business and Professions Code section 19858.5 to the Gambling Control Act, which allows a person to hold a state gambling license even if the applicant has a financial interest in a lawful out-of-state gambling business, provided that the applicant own no more than a 1 percent interest in that business. The answer to this question is critical in determining if the renewal applicant continues to qualify for a state gambling license or key employee license. A “yes” answer to this question on the license renewal application would result in further research by the Division to ascertain the extent of the applicant’s financial interests in a gambling business outside the State of California.

For clarity purposes, other minor wording changes have been made to forms CGCC-030 and CGCC-031 that are non-substantive, as they have the same meaning as stated on the versions of these forms that are currently established in regulation (Rev. 01-05).

As a result of the rewrites to forms CGCC-030 and CGCC-031, the revision dates for these forms in sections 12342(a), 12343(a)(1), 12344(a)(1) and 12345(a)(2) have been changed to read: CGCC-030 (Rev. 03/08) and CGCC-031 (Rev. 03/08).

For clarity purposes, Division forms DGC-APP. 015A, DGC-APP. 015B, DGC-APP. 015C, DGC-APP. 016A and DGC-APP. 006 have been revised. As a result, California Code of Regulations, Title 4, paragraphs (3), (4), (5), (6) and (10) of subsection (a) of section 12342 are amended by these regulations to reflect the new revision dates for these forms to read: (Rev. 03/08). Except as otherwise stated below, the changes to these forms are non-substantive, where the new language has the same meaning as the existing language. The exceptions to this are as follows:

1. In many cases, requested information has been completely deleted from the forms, as the Division found that the information served little purpose in determining the applicant’s qualifications for licensure. In other cases, clarifying details have been added to the forms which help the applicant better understand the type of information that had already been requested.

2. The titles of forms 015A, 015B and 016A would be revised by these regulations to better differentiate these forms from one another and from form 015C. Form 015A requests personal information about each owner applicant-individual that has an interest in the gambling establishment, so the words Owner Applicant-Individual have been added to the form's title for clarity purposes. Form 015B requests information about the owner entity of the gambling establishment, so the words Owner Entity have been added to the form's title for clarity purposes. Finally, the words Background Investigation have been added to the titles of forms 015A and 016A to help denote that these investigations involve the background of a natural person. As a result of these changes, California Code of Regulations, Title 4, paragraphs (3), (4) and (6) of subsection (a) of section 12342 are amended by these regulations to reflect these new form titles.

3. The introductory paragraphs in forms 015A, 015B, 015C and 016A would be revised with clarifying language that will help gambling license and key employee license applicants choose the correct supplemental information form(s).

4. The "Marital Information" section of forms 015A and 016A would be revised by these regulations to include a date of birth for former spouses. The current forms only call for the date of birth of the current spouse. This change would provide the Division with sufficient identifying information, should the need arise to obtain additional information regarding the applicant's former spouse.

5. The "Experience and Employment" section of forms 015A and 016A would be revised by these regulations to include a telephone number for the applicant's supervisor. This section of these forms currently requests the name, address and telephone number of the employer. This revision would recognize that a supervisor's contact number could be different than that of the central employer.

6. The "Gross Annual Income" section of forms 015A and 016A would be revised by these regulations to include the identification of the type of business from which income has been derived. The current version of these forms requests only the dollar amount of business income. This revision to include the type of business would allow the Division to identify any possible prohibited interests that could affect the applicant's suitability for licensure.

7. Section J (new section 6) of forms 015A and 016A would be revised by these regulations to include details for all crimes (misdemeanors and felonies). The current versions of these forms requests details for felonies, but only a yes/no response for misdemeanors. These regulations will revise these forms to request details for both misdemeanors and felonies. Information about misdemeanors is necessary in order for the Commission and the Division to meet their respective obligations and responsibilities under the Act.²³

8. Forms 015A, 015B, 015C and 016A would be revised by these regulations to include a section that explains all of the various forms, fees and other documents that will be necessary for the applicant to complete and submit to the Division. These forms and documents are currently listed on the Division form “Instructions to Applicants, DGC-APP. 007 (Rev. 12-04)”. Form DGC-APP. 007 would be abolished by these regulations because the list of required forms and documents would be included on forms 015A, 015B, 015C, 016A, or on forms CGCC-030 or CGCC-031. These regulations would also add “Articles of Incorporation” and “Partnership Agreements” to the document list on form 015B. In the past, the Division would wait until later in the background investigation before requesting these documents. Adding them to the document list on form 015B would help to produce a more complete list for the applicant and would help to speed up the licensing process by making the application package more complete from the very start.

9. In various sections of the current versions of forms 015A, 015B, 015C and 016A, the applicant is requested to provide complete details for such issues as other business names, parent companies, subsidiaries, affiliates, bankruptcies, judgments, liens, repossessions, asset or liability control and/or military experience. The Division found that these requests to provide complete details were too vague and open-ended, and produced inconsistent responses from applicants. As a result, these regulations will modify these forms to limit the applicant’s response to only specific information that is vital to the Division’s background investigation.

10. The “Other Licensing Information” sections of forms 015A, 015B and 016A would be revised by these regulations to require that any licenses or permits held for the holding of a lottery must be reported. This

²³ Business and Professions Code, sections 19823, 19824, 19826, 19827, 19857, 19858 and 19859.

revision is for clarity purposes, as some applicants may not associate a lottery as being related to gaming. Lotteries, as defined in Penal Code section 319 are prohibited by Penal Code section 320, and ownership or interest in a lottery could affect an applicant's suitability for licensure.

11. Forms 015A, 015B and 015C would be revised by these regulations to specifically ask the applicant if the gambling establishment, or any interest in the gambling establishment, is owned by a trust. The Division has found in the past that not all applicants were aware that a trust interest in a gambling establishment must be reported, as per Business and Professions Code section 19852. If the applicant's answer to this trust question is "yes", the applicant is advised by this revision to include in their application package new Division form "Trust Supplemental Background Investigation Information, DGC-APP-143 (New 03/08)". See below for a more complete discussion of the new form DGC-APP-143.

12. The "Statement of Assets" sections of forms 015B and 015C would be revised by these regulations to include the market value of any capital improvements of assets. This will help the Division identify any additional funds that may have been invested in the gambling establishment. These regulations would also revise this section of forms 015A, 015B, 015C and 016A to include the purchase price of business investments and real estate. A total for the purchase price for these items is currently called for in Schedules D and E. These revisions would merely bring those figures forward to the Statement of Assets section.

13. The "Statements of Liabilities" section of forms 015A, 015B, 015C and 016A would be revised by these regulations to include a request to declare the initial amount of payable notes and mortgages, rather than just the present balance. This will allow the Division to identify a reduction or gradual pay-down of these liabilities over time. A total for the initial amount for payable notes and mortgages is currently called for in Schedules I and J. These revisions would merely bring those figures forward to the Statement of Liabilities section.

14. The various schedules for forms 015A, 015B, 015C and 016A that report specific assets and liabilities would be amended by these proposed regulations by adding a notation that the total shown on each schedule should match that shown for that asset or liability in the main body of the form. This clarifying change will help the applicant understand how each

schedule provides specific details for the totals listed in the main body of the form.

15. The “Declaration” section in forms 015A, 015B, 015C and 016A would be revised by these regulations to make it easier for the applicant to understand. Much of the complex legal language has been replaced with a simple declaration, under penalty of perjury, that the information on the form is true, accurate and complete. Further, these proposed regulations would move the declaration section for forms 015A, 015B, 015C and 016A forward, to the end on the main body of each form, rather than having it at the end of the form’s various schedules. To help insure that the schedules for these forms are valid attachments, the Division also added a signature block for each schedule.

16. The various schedules for forms 015A and 016A that report specific liabilities would be amended by these proposed regulations by adding an interest rate column to those liability schedules that didn’t already have one. The interest rate incurred by a liability is an important element in the Division’s investigation of an applicant’s financial situation. This change would also make all of the liability schedules for these forms more consistent, and align them with the liability schedules for forms 015B and 015C.

17. The various schedules for forms 015B and 015C that report specific assets and liabilities would be amended by these proposed regulations by deleting the column that shows the date of the balance for each asset, and the date of the unpaid balance for each liability. The Division has found that the other column on these schedules that calls for the current balance (or unpaid balance) is sufficient, without the need for a date for those balances. Having a date for these balances could cause confusion, leading the applicant to believe that it’s acceptable to list balances that are outdated. For a more accurate picture of the applicant’s assets and liabilities, the Division would rather see the most current balances listed on these forms.

18. Schedule D (Business Investments) for forms 015B and 015C would be revised to include a column for listing the name in which a business investment is held. This information is already requested on schedule D for forms 015A and 016A. This change will provide information that is critical to the Division’s background investigation of the applicant, and

will make these schedules more consistent with those corresponding schedules for forms 015A and 016A.

19. Schedule G (Accounts Payable) for forms 015A and 016A have been revised to include a broader example of the types of accounts payable that must be reported on this schedule. Leases and lines of credit have been added to the current examples of revolving accounts and credit cards. This revision will help the applicant better understand the type of information requested. To help make them more consistent with forms 015B and 015C, schedule G for forms 015A and 016A have also been revised by replacing the “credit limit” column with a column that would list “collateral”. Collateral is being requested rather than credit limit, as collateral more appropriately applies to the type of information requested on this schedule. The Division is looking for areas where the applicant has used assets as collateral against these liabilities. Also for the purposes of consistency with forms 015B and 015C, columns for the date that each payable account was incurred have been added to schedule G for forms 015A and 016A.

20. The “Financial” information section of form 015A would be revised by these regulations to limit the reporting of bankruptcies to those events occurring within the previous 10 years. The current version of form 015A requires that all bankruptcies be reported, regardless of age. This change will align form 015A with forms 015B and 016A, in which only bankruptcies within the previous 10 years are reported.

21. These regulations would add a new section to form 015A that reports the applicant’s expenditures. Currently, form 015A asks for income information, but not expenditures. This revision to form 015A will provide applicants with the opportunity to offset their income with expenditures, thus producing a more complete picture of their financial situation.

22. The “Remunerations” section on form 015B has been revised by requesting that those remunerations totaling more than \$50,000 be reported. Form 015B currently requests that remunerations over \$100,000 be reported. This reporting threshold has been changed to align form 015B with existing law. Business and Professions Code sections 19880(d)(6) and 19890(e)(6) require an applicant to declare any remuneration in excess of \$50,000. A remuneration reporting section (#7) has also been added to form 015C, recognizing that such remuneration

can occur from the gambling establishment itself rather than just from the owner entity.

23. The “Financial Information” section of form 015B has been revised by these regulations to include the reporting of any asset repossessions or seizures within the previous 10 years, rather than the current reporting period of seven (7) years. This revision is necessary to make this reporting period consistent with what’s currently called for on form 015A.

24. The “Financial Information” section of form 015B has been revised to include the reporting of any plans to sell, merge or acquire new businesses within the next 24 months. The current version of form 015B calls for the reporting of any intentions to sell, merge or acquire new businesses within the near future. This revision limits the time frame to the term of the gambling license, which would be two years, as proposed by these regulations.

25. Schedule K (Liabilities) of form 015B has been revised by these regulations to include a listing of any liabilities due to child support or alimony. Currently, only forms 015A and 016A request this information. This amendment to form 015B recognizes that such liabilities can exist for a business entity as well as for a natural person.

26. Form 015C has been revised to include a request for information about chips in use and player’s banks. California Code of Regulations, Title 11, section 2053 currently requires gambling establishments to specifically designate accounts for both chips in use and player’s banks. Although the gathering of this information is currently part of the Division’s background investigation, requesting it up front on form 015C will help the applicant understand what will be expected of them as a licensee, and will save the Division the time necessary to explain these issues later.

27. These regulations add a litigation history section (#4) and a financial information section (#5) to form 015C. These new sections request lawsuit and financial information that apply to the gambling establishment itself. Form 015A currently requests this information from the individual owner-applicant of the gambling establishment, and form 015B requests the same information from the owner entity. These revisions to form 015C recognize that the gambling establishment itself

can be a party to litigation, without necessarily naming other parties. The research of recent lawsuits is important to the Division's role in determining the gambling establishment's suitability for licensure. Likewise, these revisions to form 015C recognize that financial information may be different for the gambling establishment than it is for the individual owners of the business. In addition to the same financial information that is currently requested on forms 015A and 015B, this new financial section on form 015C will request information about any game inventors or profit sharing arrangements that may create a financial interest in the gambling establishment. This information is necessary in order to identify other persons or entities that may require licensure, pursuant to Business and Professions Code, section 19850.

28. The rent/lease section of form 015C would be revised by these regulations to include the identification of those individuals who both own the building or property on which the gambling establishment sits and also have a financial interest in that gambling establishment. This information is necessary in order to identify other persons or entities that may require licensure, pursuant to Business and Professions Code, section 19850.

29. The "Personal Information" section of form 016A would be revised by these regulations to include the disclosure of any family members who work in a gaming facility in California. Pursuant to Business and Professions Code, subdivision (b) of section 19854 and subdivision (b) of section 19857, the disclosure of this information is necessary for the Division to insure that these associations do not create or enhance the dangers of unsuitable, unfair or illegal practices in the conduct of controlled gambling. This section of form 016A would also be revised to include the name of the supervisor of any family members who work in a California gaming facility. The name of the supervisor is necessary so that Division staff have a contact point at the gaming facility from which to verify the duties of the family member.

30. The "Residences" section of form 016A would be revised by these regulations to include a listing of all residences during the preceding five (5) years, rather than the current ten (10) year requirement. For key employee licenses, the Division has found a five-year residential history to be sufficient in determining an applicant's qualifications for licensure.

31. The “Gross Annual Income” section of form 016A would be revised by these regulations to include a yes/no question as to whether the key employee license applicant receives bonuses or profit sharing that are based on the revenue of the gambling establishment. If the bonuses or profit sharing were based on the employer’s revenue, the applicant is required to be licensed as one of the owners of the gambling establishment, rather than a key employee.²⁴

32. The release information on the first page of form 006 would be updated and revised by these regulations. Section 1 would be revised to include an explanation that the Division (within the Department of Justice) will be conducting the background check of the applicant, and will subsequently report its findings to the Commission. To more completely explain issues involving privileged information, this section of form 006 has also been changed to include, (as page two) a complete reprint of Business and Professions Code section 19828. In section 2 of form 006, these changes include a more specific explanation of the types of information, records or documents that will be released as a result of the applicant’s signature on the form. The current version of form 006 authorizes the release of any information or documents, whereas the revised form would specifically authorize the release of financial, employment, military, court, criminal or other licensing information, records or documents. Minor wording changes to sections 3 and 4 of form 006 have been proposed which would help to make them more consistent with the rewording of sections 1 and 2. Finally, the section of the form stating that the release is valid until the first occurring of either 24 months or until the background investigation is concluded would be changed to simply state that the release is valid for 12 months.

The authority to make these revisions to forms 015A, 015B, 015C, 016A and 006 is contained in Business and Professions Code, sections 19811, 19824, 19826, 19827, 19840, 19841, 19850, 19851, 19852, 19854, 19856, 19857, 19858, 19859, 19864, 19865, 19866 and 19912.

Paragraph (28) of subsection (a) of section 12342 would be amended by these proposed regulations to require a different IRS form to be completed by a license applicant and forwarded to the Division as part of the applicant’s supplemental package. The required form would change from “Tax Information Authorization, IRS 8821 (Rev. April 2004)” to “Request for Transcript of Tax Return, IRS 4506-T (Rev. April 2006)”. The authority

²⁴ Business and Professions Code, section 19850

for the Division to obtain a copy of a license applicant's federal tax return is contained in Business and Professions Code, paragraph (12), of subdivision (d), of section 19880, and paragraph (12), of subdivision (e) of section 19890.

Subsection (a) of section 12342 would be amended by these proposed regulations to include a new paragraph (8), which would implement the new Division form, "Trust Supplemental Background Investigation Information, DGC-APP-143 (New 03/08)". Paragraph (8) has been left open due to the proposed repeal of form DGC-APP. 017A (see above). This new form (DGC-APP-143) requests information that is unique to a trust, such as the trust, trustee, trustor and beneficiary. The purpose of this new form 143 is to identify those individuals who must be licensed when a trust is involved with the ownership of a gambling establishment. Business and Professions Code, section 19852 provides the authority to establish this new Division form.

Paragraph (2) of subsection (a) of section 12343 has been amended to strike the words "for processing", when referring to a license application package that is forwarded from the Commission to the Division. The intent of this paragraph is to require the Commission to forward the application to the Division within 10 days of determining that the package is complete. The words for processing may imply that the Division will process the application package, when in fact; the role of accepting and processing applications is assigned to the Commission.²⁵ The Division's role is to investigate the qualifications and background of the applicant.²⁶ As a result, the words "for processing" are unnecessary and may cause confusion. Business and Professions Code sections 19811, 19824, 19840 and 19841 provide the authority to make these changes to section 12343.

Subsection (a) of section 12344 has been amended by striking the words "for an individual or a business organization" when referring to a state gambling license. These words are unnecessary and could cause confusion, as this section applies to all gambling licenses, regardless of ownership structure. Paragraph (1) of subsection (a) of section 12344 has also been amended to strike the word "form", when referring to a completed license application package. In this usage, the word form is unnecessary and grammatically incorrect, as a completed application package includes more than just the

²⁵ Business and Professions Code, subdivision (a), of section 19824, and subdivision (a), of section 19841

²⁶ Business and Profession Code, subdivision (a), of section 19826

form. Finally, paragraph (2) of subsection (a) of section 12344 is being repealed, as the form entitled “Renewal Supplemental Information for State Gambling/Key Employee License and Instructions to Renewal Applicants” (DGC-APP. 017A) is no longer in use. Business and Professions Code sections 19811, 19824, 19840 and 19841 provide the authority to make these changes to section 12344.

Subsections (a) and (b) of section 12357 have been added to Chapter 6. These subsections would base the amount of the annual fee required by Business and Professions Code section 19951(b)(2)(B) on the number of tables authorized by the license or the gross revenues for the licensee’s preceding fiscal year. Section 12357 would make the fee due 120 days following the end of the licensee’s fiscal year. These fees would be paid on the same schedule as that which is currently established in regulation for the annual submission of financial statements.²⁷ This means that table fees and financial statements would be due at the same time each year, both due 120 days following the end of the licensee’s fiscal year.

A new Commission form (CGCC-028) is proposed by these regulations that would capture gambling establishment activity and revenue information. This form will help licensees calculate table fees that are paid to the Commission on an annual basis. Currently, license renewal form CGCC-030 is used to capture this information. Since these regulations would establish a two-year license for gambling establishments, form CGCC-030 will only be submitted on a biennial basis. As a result, a new form is necessary to help licensees calculate annual table fees. These proposed regulations would establish new form CGCC-028 (New 08/07) in proposed subsection (c) of section 12357.

Form CGCC-028 would also provide a formula from which the licensee can calculate the gambling addiction fee authorized by Business and Professions Code section 19954. In addition to the table fees required by Business and Professions Code section 19951, section 19954 requires each license applicant to pay an additional \$100 for each table. This gambling addiction fee helps to fund the Gambling Addiction Program, which is administered by the Department of Alcohol and Drug Programs (DADP). As per an agreement with the DADP, the Commission collects this fee and subsequently remits it to the Gambling Addiction Program Fund.

²⁷ California Code of Regulations, Title 4, subsection (b) of section 12403

The authority to establish section 12357 is contained in Business and Professions Code sections 19811, 19823, 19824, 19840, 19841, 19876(a) and 19951.

Paragraphs (2), of subsections (a), of both sections 12358 and 12359 are being amended to cause the Commission to accept payment of both an application fee and a Division review deposit when the owner licensee of a gambling establishment applies for additional tables, on a temporary or permanent basis. The Division has recently authorized the Commission to receive the review deposit on its behalf. These changes will simplify this application process by having the applicant submit both fees directly to the Commission, along with their application form and additional table fees.

Accordingly, these regulations would amend sections 12358(a)(2) and 12359(a)(2) so that these fees and deposits could be paid with just one check, made payable to the Commission.

To facilitate the application for additional tables, the applicable of the following two forms are submitted to the Commission:

- Request for a Certificate to Operate Additional Tables on a Temporary Basis, CGCC-024 (Rev. 01-07)
- Application for Additional Authorized Permanent Tables, CGCC-027 (Rev. 07-06)

These forms currently request the applicant to make fees and deposits payable to the Commission and to the Division separately. These regulations would amend these forms so that the applicable fees and deposit could both be payable directly to the Commission. Accordingly, sections 12358(a)(1) and 12359(a)(1) would be amended by these regulations to reflect a revision date of 03/08 for forms CGCC-024 and CGCC-027.

Business and Professions Code sections 19811, 19823, 19824, 19840, 19841, 19950(b), 19951 and 19952 provide the authority to make these changes to sections 12358 and 12359.

Amendments that had been originally proposed to section 12370 (Emergency evacuation) will not be pursued in this regulatory action. Additional substantive amendments should be made to section 12370, but these proposed regulations are not the appropriate vehicle for making these additional changes. These additional amendments should be the subject of a

separate 45-day notice. As a result, a separate regulation proposal will be noticed regarding this subject.

Part B: Comments-- Summary and Responses

Prior to the public hearing, the Commission received written comments from the Division (dated August 15, 2007). In general, the Division's comments are in support of the proposed regulations. However, the Division did request the following three changes:

1. The Initial Statement of Reasons should be revised to remove the portion of a sentence on page 2, paragraph 3, that states: "...complete a Renewal Supplemental Information for State Gambling/Key Employee License and Instructions to Renewal Applicants, DGC-APP 017A (Rev. 12-04)", because the Division no longer requires this form as part of the renewal process.

Response: This comment was rejected because section 12344(a)(2) had not yet been amended to delete the requirement that form DGC-APP 017A be submitted upon the renewal of a Gambling License or Key Employee License. It is this proposed action that deletes this requirement. As a result, the Initial Statement of Reasons should first quote current regulations, before proposing to terminate the use of the form.

2. The Initial Statement of Reasons should be amended to remove the sentence on page 3, paragraph 2, that states: "This process can take up to 120 days (four months) to complete", because many of the background investigations often take much longer than 120 days to complete.

Response: This comment was rejected. The Initial Statement of Reasons cannot be amended as issued on July 6, 2007. Although current laws and regulations require that renewal applications be filed no later than 120 calendar days prior to the expiration of a license,²⁸ it is not mandated that the Commission or the Division complete the renewal process within 120 days. As a result, this sentence has been deleted in the Updated Initial Statement of Reasons (see Part A).

²⁸ Business and Professions Code, subdivision (b) of section 19876, and California Code of Regulations, Title 4, paragraph (1) of subsection (a) of section 12345

3. The definition and use of the term “gambling enterprise” could be confusing to those seeking the issuance of a state gambling license. For consistency purposes with other regulations and the Gambling Control Act, the Division recommends use of the term “gambling establishment”.

Response: This comment was accepted. Definition of the term “gambling enterprise” in section 12335(b)(1), and use of this term in section 12340(a) have been deleted from these proposed regulations. Since the term “gambling establishment” is already defined in the Gambling Control Act,²⁹ there is no need to include another definition of that term in these proposed regulations.

At the public hearing on August 23, 2007, the Commission received both oral and written comments from Mr. Alan Titus, representing Artichoke Joe’s. The following summarizes and responds to Mr. Titus’ comments:

1. Regarding section 12340(a), the requirement for a license should specify which type of license (gambling/key employee).

Response: This comment was accepted and the following changes made to the proposed regulations. The wording of section 12340 was modified to be more specific about the type of license required. The amended subsection (a) would require a gambling license for those conducting a gambling operation; and a new subsection (b) would require a key employee license for key employees of a gambling operation. As a result, subsection (a) would apply only to gambling licenses and the new subsection (b) only to key employee licenses. Accordingly, subsection (b), as originally proposed, would be relettered to subsection (c).

2. Regarding section 12340(b), the license should be valid for two years, rather than issued for two years.

Response: This comment was accepted and the following changes made to the proposed regulations. Section 12340(b) was amended to change the word “issued” to “valid” when describing the term of a state gambling license and key employee license. As stated above, this subsection (b) would also be relettered to subsection (c) to accommodate the rephrasing of the required license types (see # 1 above).

²⁹ Business and Professions Code, subdivision (n) of section 19805

3. Section 12342 should specify which license application forms are to be completed by each type of applicant, rather than use the term as appropriate.

Response: This comment was rejected as not being germane to these proposed regulations, as that provision of section 12342(a) has not been amended from its original wording.

4. Neither section 12342 nor the various forms stated in this section make it clear who is required to submit separate applications for a State Gambling License when trusts are involved.

Response: This comment was accepted, and the instructions on page one of form DGC-APP-143 were amended to provide a clear explanation of Business and Professions (B & P) Code section 19852(e), which states in part:

19852. Except as provided in Section 19852.2 [racetrack ownership], an owner of a gambling enterprise that is not a natural person shall not be eligible for a state gambling license unless each of the following persons individually applies for and obtains a state gambling license:

"(e) If the owner is a trust, then the trustee and, in the discretion of the commission, any beneficiary and the trustor of the trust."

The instructions on form DGC-APP-143 now clearly state that when the owner of a cardroom is a trust, the trust must be licensed, and that certain trust-related persons must also apply for a license before the trust itself can be licensed. Accordingly, the revision date for form DGC-APP-143 that is referenced in section 12342(a)(8) was changed to read (New 08/07). Since form DGC-APP-143 is also noted within the text of Division form CGCC-030, its revision date as stated on that form was also changed accordingly. As a result, the revision date for form CGCC-030 as stated in sections 12342(a)(1), 12343(a)(1), 12344(a)(1)(A) and 12345(a)(2) was also changed to read (Rev. 08/07).

5. The Gambling Control Act does not contemplate that the trust *itself* must be licensed. B &P Code section 19852(e) requires only the trustee be licensed, and "in the discretion of the commission, any beneficiary and any trustor of the trust." It makes sense for the Gambling Control Act to not require separate licensing of the trust because other laws applying to revocable trusts ignore the trust. For example, under the Internal Revenue

Code, all income is taxed to the trustor. Thus, multiple applications should not be required.

Response: This comment was rejected. Notwithstanding how other laws might have been drafted, the Gambling Control Act expressly requires trusts to be licensed. In order to assist members of the regulated public in understanding the Commission's rationale for requiring separate licensure of trusts, the following explanation was provided on page one of form DGC-APP-143:

The Gambling Control Act requires any "person" who is an owner of a gambling enterprise to apply for and obtain a state gambling license. Business and Professions (B & P) Code section 19850.

A "trust" is a "person." B & P Code section 19805(ad) provides that:

"Person," unless otherwise indicated, includes a natural person, corporation, partnership, limited partnership, trust, joint venture, association, or any other business organization. (Emphasis added.)

Thus, a trust that is an owner of a cardroom must be licensed, just as a limited partnership in the same position must be licensed. B & P Code section 19852 goes on to mandate that certain trust-related persons must also apply for and obtain a state gambling license before the trust itself can be licensed, and to authorize the Commission to require licensing of other specified trust-related persons. According to B & P Code section 19852, a trustee of a trust that is an owner of a gambling enterprise, must also apply for and obtain a state gambling license [B & P Code section 19852(e)]. Similarly, the Commission may in its discretion require that the trustor or the beneficiary of a trust that is an owner of a gambling enterprise apply for and obtain a state gambling license [B & P Code section 19852(e)].

Concerning the "multiple application" comment: we have attempted to minimize to the degree possible the number of separate applications which must be prepared. If the trust is the owner-licensee, it must submit an application per the Gambling Control Act. The instructions found in form CGCC-030 (page 2) explain that all owner-licensees, including trusts, must submit a separate application. The other trust-related parties, however, may all apply using one additional application form (trustor, trustee, and beneficiary), as is made clear on page two of Form 143 and page two of Form 030, if we are talking about a "garden variety" revocable trust. Mr. Titus, the commenter, appears to have ultimately accepted this resolution of his multiple application concerns after having considered the explanation provided by the Commission. As shown in comments 10, 11, 19, and 20, and the accompanying responses, the

comments of Mr. Titus were of considerable help in clarifying and improving the forms which were central to this rulemaking effort. For instance, the distinction between an “owner-licensee” and an “endorsed licensee” was clarified, as was the question of which category a trust would fall into.

See also the response to comment 4.

6. Regarding section 12342(a), the Commission lacks the authority to adopt Division supplemental information forms.

Response: This comment was rejected. The Division has elected to have the Commission develop these forms as a result of B & P section 19841(a), which clearly gives the Commission the authority and duty to adopt regulations concerning “...*applications, registrations, investigations, and fees...*”

Paragraph (1) of subsection (a) of B & P section 19841 states that the Commission shall:

“Prescribe the method and form of application and registration.”

Paragraph (2) of subsection (a) of B & P section 19841 states that the Commission shall:

“Prescribe the information to be furnished by any applicant, licensee, or registrant concerning, as appropriate, the person’s personal history, habits, character, associates, criminal record, business activities, organizational structure, and financial affairs, past and present.”

The information requested in the supplemental information forms relates to that noted above in B & P section 19841(a)(2).

7. Regarding section 12357, the table fee should be based on the number of tables authorized by the license, not in use.

Response: This comment was accepted and the following changes made to the proposed regulations. The wording of the new section 12357(a) has been amended by replacing the words “in use” with “authorized by the license”. This change will help to better describe the number of tables when calculating table fees. This change would also align the wording of this section with that of B & P section 19951(c).

8. Regarding section 12400(b)(4), fiscal year should not be defined as a calendar year, as this is opposite of common usage.

Response: This comment was accepted and the following changes made to the proposed regulations. The wording of section 12357 has been amended by requiring that the annual payment of table fees be made 120 calendar days following the end of the licensee's fiscal year. These regulations originally proposed that these fees be paid on a calendar year basis. As a result, proposed subsections (a) and (b) of section 12357 have also been amended accordingly, and the originally proposed subsection (c) has been deleted. Likewise, these changes would delete proposed amendments to sections 12400(b)(4) and section 12403(b), leaving the submission of financial statements on a fiscal year basis also. These changes would still accomplish the original purpose of these proposed regulations, to align the schedule for the annual payment of table fees with the schedule for the submission of financial statements.

9. Section 12403(b) should allow cardrooms to provide financial statements based on a their own fiscal year.

Response: This comment was accepted. Please refer to number 8 above for the changes made to the proposed regulations.

10. Section 1 of form CGCC-030 should have only two types of applications: owner licensee and endorsed licensee. An applicant who is a trust could be either of these two. Trusts should be removed as a license type.

Response: This comment was accepted and the following changes made to the proposed regulations. The part of section 1 of Commission form CGCC-030 that pertains to trusts as a third license type was deleted, leaving only Owner Licensee and Endorsed Licensee as license types. "Trust" would be deleted by these changes as a separate third license type because a trust will always be either an owner licensee or an endorsed licensee. As a result, conforming changes were also made to page one, section 3b, section 5, and section 7 of form CGCC-030. These conforming changes would help to clarify this issue involving trusts. Accordingly, the revision date for form CGCC-030 that is referenced in sections 12342(a)(1), 12343(a)(1), 12344(a)(1)(A) and 12345(a)(2) was changed to read (Rev. 08/07).

11. As stated in the Trust box of Section 1 of form CGCC-030, the words “as indicted in section 3” are unclear, as the phrase has no description preceding it. In contrast, similar phrases are better described for Owner Licensee and Endorsed Licensee.

Response: This comment was accepted and the following changes made to the proposed regulations. As indicated in number 10 above, the trust box in section 1 of form CGCC-030 has been deleted as a license type. Accordingly, the revision date for form CGCC-030 was changed, as stated above.

12. Section 2b of form CGCC-030 includes a box entitled “Fiscal Year Reporting”, when referring to cardroom revenues. This is inconsistent with the regulation text, which calls for revenue reporting on a calendar year basis.

Response: This comment was accepted and the following changes made to the proposed regulations. Section 2b, as originally proposed by these regulations, has been completely deleted from form CGCC-030. Since these proposed regulations would establish a biennial renewal cycle, the need for annual revenue information on this license application is no longer useful. Instead, annual revenue information would be collected on proposed Commission form CGCC-028. Accordingly, the revision date for form CGCC-030 was changed, as stated above.

13. Section 3 of form CGCC-030 does not specify which names and job titles to include in an organization chart. It would be meaningless to include all employees in an application that is submitted biennially, since changes occur often. This application should include an organizational chart that includes only key employees and above.

Response: This comment was accepted and the following changes made to the proposed regulations. Section 3a of form CGCC-030, specify those cardroom employees that must be listed on an organizational chart as: “officers, shareholders, partners, members, etc. that are associated with the entity”. Accordingly, the revision date for form CGCC-030 was changed, as stated above.

14. Division regulations require a semi-annual key employee report. It would be more efficient to require a listing of key employees with the application (CGCC-30) and abolish the semi-annual key employee report.

Response: This comment was rejected. California Code of Regulations, Title 11, Section 2060 requires the owner of a gambling establishment to submit a Key Employee Report, (form DGC-LIC. 101), to the Division on a semi-annual basis. This report is separate from the license renewal process and is non-germane to these proposed regulations. Further, these regulations propose a two-year license term for gambling establishments. The Key Employee Report is required by existing regulations on a semi-annual basis due to the turnover of employees at a gambling establishment. If this form were submitted only once ever two years, employee attrition at some gambling establishments may be such that some key employees may actually start and end their employment there, without ever applying for a key employee license. This could cause some key employees to avoid the requirements of licensure altogether. Finally, SB730 requires the Commission to establish portable personal licenses for key employees.³⁰ As a result, the renewal of key employee licenses would be separate from the gambling establishment, making the semi-annual Key Employee Report all that more important.

15. The instructions for completing section 3b of form CGCC-030 are unclear and cryptic. They should include more specifics regarding officers, directors and shareholders for corporations, general and limited partners for partnerships, and members for limited liability companies. Likewise, the “Compensation Arrangement” box should specify whether it wants specific numbers or just types of compensation.

Response: This comment was accepted and the following changes made to the proposed regulations. The instructions portion of section 3b of form CGCC-030 has been amended to more specifically identify those entities/individuals that must be listed on the form. Section 3b has also been amended to further clarify the information requested in the “Compensation Arrangement” box as: salary, hourly wage, incentives, bonuses, etc. Accordingly, the revision date for form CGCC-030 was changed, as stated above.

16. As stated in the footnote on page two of form CGCC-031, the personal residence address of key employees will be disclosed as a public record.

³⁰ Business and Professions Code, subdivisions (c) and (d), of section 19854

Requesting that key employees purchase a post office box or mail drop box to prevent their personal address from being disclosed is unreasonable. Further, the disclosure of a key employee's residence address is exempt under Government Code section 6255(a). The Commission should just adopt the policy of not disclosing these personal addresses.

Response: This comment was accepted. Please see the Commission's response under "Other Third 15-Day Changes", item #1.

17. Key employees should not be asked to describe their job duties in section 2 of form CGCC-031. The forms should be changed so that the employer, a more accurate source, provides this information.

Response: This comment was rejected. Although the employer assigns the duties of a key employee, it is critical that the key employee understand what those duties are. The Gambling Control Act defines a "Key Employee" as a supervisor or a person who is empowered to make discretionary decisions that regulate gambling operations.³¹ It is important that the license application form for key employees establish the basis for licensure: That is, that the applicant meets the definition of a key employee. Since the person seeking licensure is the employee, not the employer, it is appropriate to have the applicant provide this basic information. The employer is, of course, free to provide a list of duties to the applicant and assist the applicant in completing the application. Finally, SB730 requires the Commission to establish portable personal licenses for key employees.³² As a result, it is important for the Commission and the Division to understand these duties from the key employee's prospective.

18. The name of the form entitled Trust Supplemental Background Investigation Information (DGC-APP-143) should be shortened to: "Trust Supplemental Information".

Response: This comment was rejected. The words "background Investigation" are important in helping the applicant to understand the license application process, which includes an investigation of the applicant's background, as authorized by statute.³³ This same language is

³¹ Business and Professions Code, subdivision (w) of section 19805

³² Business and Professions Code, subdivisions (c) and (d), of section 19854

³³ Business and Professions Code, subdivision (a) of section 19823, section 19824, subdivision (a) of section 19826, subdivision (a) of section 19841, and section 19857

proposed for other supplemental information forms (DGC-APP- 015A & DGC-APP- 016A). For consistency purposes, and for a better understanding of the purpose of the form, it is important to keep the titles similar.

19. The instructions on page one of proposed Division form DGC-APP-143 are incorrect regarding the requirement that all trusts must be licensed. The Gambling Control Act requires the licensing of trusts only when the owner of the cardroom is a trust.³⁴ The law does not require the licensure of a shareholder, partner or LLC member who is a trust.

Response: This comment was accepted and the following changes made to the proposed regulations. The instructions portion (page one and two) of proposed Division form DGC-APP-143 has been rewritten. The new wording more accurately identifies those individuals who must be licensed when a trust is involved with the ownership of a gambling establishment. A trust must be licensed if it owns all or part of a cardroom. For further clarification of the licensing requirements for trusts, these instructions would now also include a partial quotation from B & P section 19852. Accordingly, the revision date for form DGC-APP-143 that is referenced in section 12342(a)(8) was changed to read (New 08/07). Since form DGC-APP-143 is also noted within the text of Division form CGCC-030, its revision date as stated on that form was also changed accordingly. As a result, the revision date for form CGCC-030 as stated in sections 12342(a)(1), 12343(a)(1), 12344(a)(1)(A) and 12345(a)(2) was also changed to read (Rev. 08/07).

20. The instructions on page one of form DGC-APP-143 do not state who must complete this supplemental information form. The other supplemental forms state who must complete the form.

Response: This comment was accepted and the following changes made to the proposed regulations. The new wording of the instructions for form DGC-APP- 143, (see # 19 above), would also better explain who must complete the form. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

21. Regarding box A) in section 1 of form DGC-APP- 143, trusts do not always have names. The form should read “Trust Name, if any”.

³⁴ Business and Professions Code, subdivision (e) of section 19852

Response: This comment was rejected. A trust is identified either by a name, formally selected by its creators, or by simply restating the name of the trustor, such as: “The Trust of Bill Smith”. In either case, there would be an obvious entry for box A) in section 1 of DGC-APP-143.

22. Box D) and E) in section 1 of form DGC-APP-143 are unclear. Use of the term “Applicant” may be confused with the trust that is completing the form. Suggest language change to distinguish the owner of the cardroom from the owners of an entity that owns the cardroom.

Response: This comment was accepted and the following changes made to the proposed regulations. In section one of form DGC-APP-143, original boxes D) and E) have been amended to clarify the information requested. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

23. Box D) in section 1 of form DGC-APP-143 provides no meaningful information, since all trusts are created for estate planning purposes.

Response: This comment was accepted and the following changes made to the proposed regulations. In section one of form DGC-APP-143, original box D) has been amended to clarify the information requested. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

24. Box G) and H) of section 1 of form DGC-APP-143 are nonsensical, since there would be no reason to fill out the form if a trust was not in effect, or not funded.

Response: This comment was accepted and the following changes made to the proposed regulations. In section one of form DGC-APP-143, original boxes G) and H) have been amended to clarify the information requested. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

25. Section 1 of form DGC-APP-143 should ask how the trust was created (see Probate Code section 15200).

Response: This comment was rejected. How a trust came to exist is not important to the Commission in determining licensure requirements. For the purposes of determining if a gambling license is required, it is the

trust document itself that is most important. The trust document contains the terms of the trust, and it is those terms that will determine if certain parties to the trust will be required to apply for a license. For example, in determining if a trust beneficiary is required to be licensed, Commission staff will review the trust document, which will contain the terms under which the beneficiary may, or may not, receive a percentage share of revenue from a gambling enterprise.³⁵ Information about how a trust was created is not necessary in answering these critical licensing questions, and as a result, need not be included in form DGC-APP-143.

26. Section 2 of form DGC-APP-143 should ask whether a beneficiary is a current beneficiary or a future beneficiary, since a licensing question is answered with the response.

Response: This comment was accepted and the following changes made to the proposed regulations. Section 2 of form DGC-APP-143 has been amended to include a distinction between a current and future beneficiary. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

27. While a request for a brokerage statement would be understandable, the request for the actual name of the broker in box D) of section 3 of form DGC-APP-143 seems over-reaching.

Response: This comment was accepted and the following changes made to the proposed regulations. Box D) of section 3 of form DGC-APP-143 has been amended to simply request the name, phone number and e-mail address of a contact person for the applicant. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

28. Box G) of section 3 of form DGC-APP-143 asks if the trustee is a beneficiary. This is duplicative, since all trustees and beneficiaries are already listed in section 2.

Response: This comment was accepted and the following changes made to the proposed regulations. The wording in Box H), formally Box G), has been amended so that the applicant does not need to provide details about those beneficiaries already listed in section 2 of form DGC-APP-

³⁵ Business and Professions Code, subdivision (g) of section 19852

143. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

29. Section 4 of form DGC-APP-143 states that documents that are not signed by all parties will not be accepted. A trust need not exist in writing. A trust declaration is legally effective when only signed by the trustee. Beneficiaries never sign the trust instrument. Likewise, who is supposed to sign the summary of trust terms, financial statement, organizational diagrams and asset flow charts?

Response: This comment was accepted and the following changes made to the proposed regulations. The instructions for section 4 of form DGC-APP-143 have been changed to drop the requirement that all of the requested documents be signed. Instead, only the trust document and amendments must be signed. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

30. The language in section 4 of form DGC-APP-143 regarding a summary of trust terms is unclear. The Division should ask for the provisions of the trust that govern distributions of income and principal.

Response: This comment was accepted and the following changes made to the proposed regulations. Section 4 of form DGC-APP-143 has been reworded to better explain the requested terms of the trust, such as contingencies that may impact the status of interests in the trust or its distributions. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

31. The instructions for section 4 of form DGC-APP-143 should follow the common accounting practice of including trust assets on the trustor's personal financial statement, where a person has a revocable trust that is a grantor trust.

Response: This comment was accepted and the following changes made to the proposed regulations. The request for an overall financial statement was deleted from Section 4 of form DGC-APP-143. Instead, section 4 was amended to request only specific financial information, which is crucial to an evaluation of the trust and the possible need for the licensure of individuals with significant influence over the trust. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

32. The request in section 4 of form DGC-APP-143 for current diagrams and charts identifying the organization of the trust and the flow of assets is overkill. Use of the word “parties” is unclear, and the category “other” is unclear as to what should be entered.

Response: This comment was accepted and the following changes made to the proposed regulations. The requirement in section 4 of form DGC-APP-143 that the applicant include charts identifying the organization and the flow of assets has been deleted. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

33. The summary of B & P section 19828 in paragraph 1 of form DGC-APP. 006 is incomplete, failing to state that the information be provided in good faith. Overall, the language in paragraph 1 is not necessary for the release, and should be omitted from the form. Instead, a complete copy of section 19828 should be provided to third parties who provide information about the applicant.

Response: This comment was accepted and the following changes made to the proposed regulations. Language has been added to paragraph 1 of Division form DGC-APP. 006 that has the applicant acknowledge that the Department of Justice will investigate the applicant’s background, and report its findings to the Commission. This new language in paragraph 1 also states that a complete copy of B & P section 19828 is included on page 2 of the form. Accordingly, the revision date for form DGC-APP. 006 that is referenced in section 12342(a)(10) was changed to read (Rev. 08/07). Conforming changes were also made to the revision date for form DGC-APP. 006 as stated on Division forms DGC-APP-015A, 015B, 015C and 016A. As a result, the revision dates for those forms as stated in section 12342(a)(3), (4), (5), and (6) were also changed accordingly to read (Rev. 08/07).

34. In paragraph 2 of form DGC-APP. 006, it is not clear to what extent the applicant is being asked to waive his or her rights to privacy. Is the waiver just another way of saying that a third party can release documents about the applicant, or does the waiver go beyond that? If the waiver is just an authorization for third parties to release documents, this is already accomplished in paragraph 4 of this form.

Response: This comment was accepted and the following changes made to the proposed regulations. Paragraph 2 of form DGC-APP. 006 has been amended to delete language that would waive the applicant's right to privacy. Language has also been added to paragraph 2 that provides more detail regarding the types of financial and tax records that would be released, including bank statements, account information such as the number of accounts and account balances, and federal tax returns. Accordingly, the revision dates for forms DGC-APP. 006, 015A, 015B, 015C and 016A were changed, as stated above.

35. The waiver language in paragraph 2 of form DGC-APP. 006 violates the applicant's U.S. and California constitutional rights to privacy. Applicants do not waive these rights when applying for a license, and the Commission has no authority to require such.

Response: This comment was accepted. Please refer to number 34 above for details of the changes made.

36. The Commission lacks statutory authority to require the hold harmless statement in paragraph 3 of form DGC-APP. 006, and cannot exculpate itself and other state agencies from the liabilities associated with adverse public notice, embarrassment, criticism or financial loss. This document is an authorization to release information and is not intended to govern the relationship between the applicant and state agencies.

Response: This comment was accepted and the following changes made to the proposed regulations. The hold harmless clause in paragraph 3 has been deleted from form DGC-APP. 006. As a result, the remaining paragraphs on form DGC-APP. 006 have been renumbered. Accordingly, the revision dates for forms DGC-APP. 006, 015A, 015B, 015C and 016A were changed, as stated above.

37. Form DGC-APP. 006 fails to comply with the California Right to Financial Privacy Act, in that it fails to notify the applicant that he or she can revoke their authorization for the release of financial records directly from a financial institution (Government Code sections 7470, 7473 & 7473(c)). The Legislature never required that an applicant allow the state to obtain financial information directly from the financial institution. Therefore, the form must include the revocable language required by law.

Response: This comment was rejected. The California Right to Financial Privacy Act only applies to "investigations" as defined in Government Code section 7465. See Government Code section 7470. Government Code section 7465 provides:

(h) The term "investigation" includes, but is not limited to, any inquiry by a peace officer, sheriff, or district attorney, or any inquiry made for the purpose of determining whether there has been a violation of any law enforceable by imprisonment, fine, or monetary liability.

The background investigation conducted by the Division pursuant to the Gambling Control Act is not an "investigation" within the meaning of Government Code section 7465(h) because the Division process is not undertaken "for the purpose of determining whether there has been a violation of any law enforceable by imprisonment, fine, or monetary liability." The purpose of the Division's applicant background check process is to ensure that cardroom gambling is "free from criminal and corruptive elements, and that it is conducted honestly ...";³⁶ and that "unsuitable persons not be permitted to associate with gambling activities or gambling establishments".³⁷ A determination of a violation of law would have already been made in these cases, since the background check conducted by the Division is looking for convictions of crimes.

The following B & P sections illustrate the broad scope of the background check conducted by the Division.

According to B & P section 19856(b):

(b) An application to receive a license constitutes a request for a determination of the applicant's general character, integrity, and ability to participate in, engage in, or be associated with, controlled gambling.

According to B & P section 19857(a & b):

No gambling license shall be issued unless, based on all of the information and documents submitted, the commission is satisfied that the applicant is all of the following:

(a) A person of good character, honesty, and integrity.

³⁶ Business and Professions Code, subsection (g) of section 19801

³⁷ Business and Professions Code, subsection (k) of section 19801

(b) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state, or to the effective regulation and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto.

The following B & P section requires that an applicant make full disclosure of all necessary information to the Division and Commission. According to B & P section 19866:

An applicant for licensing or for any approval or consent required by this chapter, shall make full and true disclosure of all information to the division and the commission as necessary to carry out the policies of this state relating to licensing, registration, and control of gambling.

The following B & P section requires the Commission to deny a license to an applicant who fails to make full disclosure of necessary information. According to B & P section 19859(b):

The commission shall deny a license to any applicant who is disqualified for any of the following reasons:

(b) Failure of the applicant to provide information, documentation, and assurances required by this chapter or requested by the director [of the Division of Gambling Control], or failure of the applicant to reveal any fact material to qualification, or the supplying of information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

Since the California Right to Financial Privacy Act does not generally apply to the license applicant background checks conducted by the Division, the particular provision of the California Right to Financial Privacy Act requiring that an authorization to release information be revocable does not apply either.³⁸

38. Form DGC-APP. 006 fails to comply with the California Right to Financial Privacy Act, in that it fails to specifically identify the financial records to be released (Government Code section 7473).

³⁸ Government Code, subdivision (c) of section 7473

Response: This comment was rejected. Please refer to the response for comment number 37, above.

Since the California Right to Financial Privacy Act does not apply to the license applicant background checks conducted by the Division, the provision of that act requiring that released financial records be specifically identified would not apply either.³⁹

39. Form DGC-APP. 006 sets the period of time for the release of information at 24 months. There is no justification for this intrusion into an applicant's privacy. Renewal applications are acted upon within 120 days. There is no reason for the release to be in effect after action on the application.

Response: This comment was accepted in part. Please see the Commission's response under "Other Third 15-Day Changes", item #2.

During the first 15-day change period, the Commission received written comments from Mr. Alan Titus, representing Artichoke Joe's. The following summarizes and responds to Mr. Titus' comments:

1. The revised instructions language on Division form DGC-APP-143 creates serious concerns that a gambling license may be required of a trust beneficiary that is a minor, under 21 years of age. In amending B & P section 19852, the analysis language for Senate Bill 2039 (1998 Stat. Ch. 608) stated that the bill would "[g]ive the Division the discretion to allow a minor, not exercising any control in the gambling establishment, to maintain their interest in that establishment without being licensed."

Response: This comment was accepted and the instructions section of Division form "Trust Supplemental Background Investigation Information" (DGC-APP-143) has been amended to include a statement that no person under 21 years of age is required to apply for a gambling license. Pursuant to its discretionary authority authorized by B & P section 19852(e), and pursuant to the restrictions applied by B & P section 19859(g), the Commission has no intentions of requiring that trust beneficiaries less than 21 years of age be licensed. Accordingly, the revision date for form DGC-APP-143 as stated in section 12342(a)(8)

³⁹ Government Code, subdivision (a) of section 7470 and paragraph (3) of subdivision (a) of section 7473

was changed to read (New 11/07). Since form DGC-APP-143 is also noted within the text of Division form CGCC-030, its revision date as stated on that form was also changed accordingly. As a result, the revision date for form CGCC-030 as stated in sections 12342(a)(1), 12343(a)(1), 12344(a)(1)(A) and 12345(a)(2) was also changed to read (Rev. 11/07).

2. In many cases, even when a beneficiary child attains age 21, their parents may wish to minimize the child's control over trust assets until the parents decide that the child is sufficiently mature to take on the responsibilities of a licensee.

Response: This comment was rejected. Once a person meets the statutory requirements for licensure, the Commission does not have the discretion to exempt that person.

According to B & P section 19850:

Every person who ... receives, directly or indirectly, any compensation or reward, or any percentage or share of the money or property played, for keeping, running, or carrying on any controlled game in this state, shall apply for and obtain from the commission, and shall thereafter maintain, a valid state gambling license, key employee license, or work permit, as specified in this chapter...

According to B & P section 19852(g):

Except as provided in Section 19852.2, an owner of a gambling enterprise that is not a natural person shall not be eligible for a state gambling license unless each of the following persons individually applies for and obtains a state gambling license:

(g) Each person who receives, or is to receive, any percentage share of the revenue earned by the owner from gambling activities.

If the conditions stated in section 19850 or 19852(g) are met before a person reaches 21 years of age, the Commission still cannot require a license due to the restrictions of B & P section 19859(g), (see #1 above). However, once that person reaches 21 years of age, this restriction is lifted, and B & P section 19850 or 19852(g) would require a license if a trust beneficiary is receiving money from a gambling enterprise.

If the parents of a 21 year old adult child feel that the child is not mature enough to handle the responsibilities of gaming, then the parents have the option of changing the terms of the trust so that the gaming funds are not available to the child, such as in the case of a contingent beneficiary.

Form DGC-APP-143 clearly states that contingent or future beneficiaries are not required to be licensed.

3. The proposed regulations should set out a list of factors the Commission will consider in deciding whether and when it will require a trust beneficiary to be licensed.

Response: This comment was accepted in part, as form DGC-APP-143 does lay out the terms under which the Commission will require a trust beneficiary to be licensed. When incorporated by reference into regulation, the contents of form DGC-APP-143 will have the same force as does the regulatory language printed in the California Code of Regulations. As a result, the key factors that the Commission will consider in deciding whether to require a trust beneficiary to be licensed would in effect be established in regulation. B & P section 19852(e) allows the Commission discretion in requiring that a trust beneficiary be licensed. In its development of form DGC-APP-143, the Commission is exercising that discretion in an attempt to clarify and standardize the application of gambling license requirements to trusts. However, in certain specified circumstances, the Commission's discretion is overridden by other statutes (see responses for #'s 1 & 2 above). Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

Insofar as the comment in effect suggests that the Commission should review each particular beneficiary on a case by case basis to determine if licensure is warranted, this suggestion is rejected as too complex, burdensome, and time consuming.

4. In the revised instruction language of Division form DGC-APP-143, the phrase "... receives income from a trust ..." should be clarified as meaning distributions of principal, distributions of income, or both.

Response: This comment was accepted, and the instructions section of form DGC-APP-143 amended to include "distributions" within the meaning of the word "income" in the section of the form that relates to

the conditions for the licensing of trust beneficiaries (see condition number “(1)” at the top of page two of the form). By adding language that is more commonly used in trusts, this clarifying change will help the applicant better understand the conditions under which a trust beneficiary must be licensed. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

5. In the revised instruction language of Division form DGC-APP-143, the phrase “... receives any percentage share of revenue ...” should be changed to mean distributions, since a beneficiary of a trust does not receive a percentage share of revenue.

Response: This comment was accepted in part. On page two of form DGC-APP-143, sentence number (2) is nearly a direct quote from B & P section 19852(g). This section is specific to “any percentage share of the revenue”, and as a result, should not be altered in its meaning. However, for clarity purposes, an example situation has been added to sentence number (2). This example will add language that is more commonly used in trusts, thus helping the applicant better understand the conditions under which a trust beneficiary must be licensed. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

During the second 15-day change period, the Commission received written comments from Mr. Alan Titus, representing Artichoke Joe’s. The following summarizes and responds to Mr. Titus’ comments:

1. Although we have no disagreement in the substance of the revisions, the instructions language of Division form DGC-APP-143 should be revised, because under trust law, income and distributions are two separate and distinct concepts. The instructions should state that a beneficiary includes anyone who “is currently entitled to receive income or principal from the trust”.

Response: This comment was accepted, and the following change made to form DGC-APP-143 in the third 15-day change. The instruction language at the top of page two was changed by replacing the word income with distribution when describing money that a beneficiary may receive from a trust that owns a gambling enterprise. The word distribution is more commonly used in trusts. The second sentence of

these instructions that used the term income was also deleted by these changes. In an effort to determine if a gambling license is required, the Division simply needs to know if the beneficiary is receiving money from a gambling enterprise through a trust.⁴⁰ Accordingly, the revision date for form DGC-APP-143 as stated in section 12342(a)(8) was changed to read (New 03/08). Since form DGC-APP-143 is also noted within the text of Division form CGCC-030, its revision date as stated on that form was also changed accordingly. As a result, the revision date for form CGCC-030 as stated in sections 12342(a)(1), 12343(a)(1), 12344(a)(1)(A) and 12345(a)(2) was also changed to read (Rev. 03/08).

2. Although we have no disagreement in the substance of the revisions, the instructions portion of form DGC-APP-143 that pertains to trust beneficiaries that are minors should require that the trustee of the trust submit a copy of the beneficiary's birth certificate, rather than the parents of the beneficiary.

Response: This comment was accepted, and the following change made to form DGC-APP-143 in the third 15-day change. The instruction language in the middle of page two has been changed to restate and clarify that a copy of the minor beneficiary's birth certificate be included with the trust application package by the trustee, rather than the parent or legal guardian of the beneficiary. The obligation for including the birth certificate with the trust application package lies with the person preparing the application on behalf of the trust, the trustee. To help eliminate any confusion, the words "parent or legal guardian of such an underage beneficiary" have been deleted by this revision. Accordingly, the revision dates for forms DGC-APP-143 and CGCC-030 were changed, as stated above.

Other Third 15-Day Changes

The following summarizes other changes made and included in the Modified Text of Proposed Regulations-Third 15-Day Change:

1. A public comment received from Mr. Alan Titus, representing Artichoke Joe's at the public hearing on August 23, 2007 stated that: The personal residence address of key employees (as stated in the footnote on page two of form CGCC-031) will be disclosed as a public record. Mr. Titus stated that

⁴⁰ Business and Professions Code, sections 19850 and 19852

requiring key employees to purchase a post office box or mail drop box to prevent their personal address from being disclosed is unreasonable. Further, he stated that a key employee's residence address is exempt from disclosure under Government Code section 6255(a). Mr. Titus feels that the Commission should adopt the policy of not disclosing these personal addresses.

Response: This comment was accepted. Except under specified circumstances, the Information Practices Act (Civil Code section 1798 et seq.) prohibits a public agency from disclosing personal information in a manner that would link the information disclosed to the person to whom it pertains.⁴¹ The Information Practices act includes a person's home address in its definition of "personal information".⁴² One of the exceptions to this disclosure prohibition is information that is disclosed pursuant to the California Public Records Act (Government Code section 6250 et seq.).⁴³ Where an express exemption does not exist, the Public Records Act requires public agencies to justify the withholding of information by demonstrating that the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing it.⁴⁴

In the case of owners and employees of gambling establishments, the withholding of their home (residence) address would clearly be in the best interests of the public because:

- a. These licensees are individuals. They own, work at, or are closely affiliated with a business establishment (cardroom) that is also licensed by the Commission. The address of these cardrooms is readily available to the public on the Commission's website or through a request pursuant to the Public Records Act. Should a member of the public require an address from which to initiate a contact with these individuals, that contact can (and should) be made through the gambling establishment, not at the individual's home. These individuals do not work or exercise ownership responsibilities in any manner that is independent of the gambling establishment. There would be no legitimate need for a member of

⁴¹ Civil Code, section 1798.24

⁴² Civil Code, subdivision (a) of section 1798.3

⁴³ Civil Code, subsection (g) of section 1798.24

⁴⁴ Government Code, subsection (a) of section 6255

the public to initiate a personal contact with these individuals at any location other than at the gambling establishment.

- b. Due to the nature of the gambling industry, the safety of these owners and employees of gambling establishments and their families could be jeopardized by disclosing their home (residence) addresses to the public. For members of the public, a visit to a gambling establishment can result in the loss of a significant amount of money. This can result in friction developing between losing and winning players. The owners and employees of the gambling establishment are often left with the task of mediating these disputes. This mediation effort can redirect the friction away from the other player and towards the owner or employee. In addition, this friction can also develop when the owner or employee of the gambling establishment attempts to control intoxicated or disorderly players. The Division reports that the most common occurrence of these conflicts is a combination of the above. A player becomes intoxicated, then loses money in several hands of poker, resulting in belligerent and disorderly behavior toward other players and the staff of the gambling establishment. The Act acknowledges that these conflicts can occur, and attempts to address them through the enactment of a statute that, under specified circumstances, allows licensed owners and employees of gambling establishments to remove persons from the licensed premises.⁴⁵ Each gambling establishment maintains a list of these persons, who are denied future entry. The Division reports that, at the larger gambling establishments, this list has grown to include hundreds of excluded persons.

Since gambling establishments typically operate video surveillance cameras, there may be an incentive for these ejected persons to initiate a contact with the establishment's owner or employees at a location other than the gambling establishment itself. These ejected persons could easily obtain the name and license numbers of the employees and owners of the gambling establishment, since each is required to wear an ID badge issued by the Commission. Under such circumstances, it would not be in the best interests of the public for the Commission to indiscriminately disclose the home (residence) address of these licensees.

⁴⁵ Business and Professions Code, subdivision (a) of section 19845

- c. The Division also reports that in recent months (late 2007-early 2008), there has been a noticeable increase in what they call “follow home robberies.” These acts have been perpetrated against players as well as owners and employees of the gambling establishment. In these cases, the perpetrator follows the person home, and then robs them of their money in this more private location. The Commission and the Division should not make it easier for these robberies to occur by providing the home (residence) addresses of owners or employees. This could eliminate the need to *follow* the person home, thus allowing the perpetrator to go straight to the prospective victim’s home address and wait there.
- d. Current regulations require that the owner of a gambling establishment agree by contract to report to the Commission and the Division the identity of any registered provider of proposition player services who has been arrested by a peace officer or otherwise removed from the gambling establishment as a result of a dispute with a patron.⁴⁶ Likewise, current regulations require that any cheating on the part of a provider of proposition player services that is reported to the owner of a gambling establishment be reported to the Commission and the Division.⁴⁷ These required actions on the part of the owner of the gambling establishment can also result in circumstances, (as stated in “b” above) that may place licensees in jeopardy should home (residence) addresses be indiscriminately disclosed.
- e. Further, the Commission has published proposed regulations that will require the owner of a gambling establishment to exclude or eject those persons who appear on a list provided by the Commission.⁴⁸ Failure to do so could result in disciplinary action against the owner’s gambling license. This responsibility could result in a person being excluded or ejected from a gambling establishment that he or she has never visited in the past. This situation can also result in friction developing between an excluded

⁴⁶ California Code of Regulations, Title 4, paragraph (17), subsection (b) of Section 12200.7

⁴⁷ California Code of Regulations, Title 4, paragraph (18), subsection (b) of Section 12200.7

⁴⁸ See rulemaking file # CGCC-GCA-2007-R-7 (OAL Notice # Z-07-1218-01), and Business and Professions Code, subdivisions (c) and (e) of section 19844

person and the employee/owner of the gambling establishment that is denying them entry.

- f. Finally, every gambling establishment is required to implement a process through which patrons can self-exclude themselves from gambling establishments.⁴⁹ A list of self-excluded patrons is maintained by the Division and forwarded to all gambling establishments. Once on this list, a gambling establishment is required to deny entry to these patrons during the term of the exclusion.⁵⁰ This situation can also produce friction between a patron and the employee/owner of a gambling establishment that is denying them entry. During the first year of this “Self-Exclusion Program”, (July 2007- June 2008), approximately 150 patrons have voluntarily placed themselves on this list.

For the above noted reasons, the Commission has developed the policy to generally not disclose the home (residence) address of licensees. Although there could be an unforeseen future special circumstance in which the Commission may find that disclosure is appropriate, protection is provided by the general policy of withholding this personal information. The Commission continues to consider forms CGCC-030 and 031 as public records. A Public Records Act request for these documents would result in a redaction of the licensee’s home (residence) address, prior to providing the requester with a copy of the form. The public interest served by withholding the home (residence) addresses of the licensees and their families far outweighs the public’s need for these addresses.

Accordingly, the footnotes on page two of form CGCC-031, and on page four of form CGCC-030, have been reworded as part of the third 15-day change to these regulations. These amendments reassure the license applicant that their personal residence address will not be disclosed. Likewise, forms CGCC-031 and CGCC-030 have been amended in the third 15-day change to provide the applicant with the option of providing a mailing address that is separate from their residence address. If a separate mailing address is provided, then all correspondence from the Commission will be mailed to the applicant at this separate mailing address. Finally, the revision dates for forms CGCC-030 and CGCC-031

⁴⁹ California Code of Regulations, Title 4, subsection (a) of Section 12464

⁵⁰ California Code of Regulations, Title 4, paragraph (3), subsection (a) of Section 12464

referenced in sections 12342(a), 12343(a)(1), 12344(a)(1) and 12345(a)(2) were changed to read: 03/08.

2. A public comment on the regulation as originally proposed was received from Mr. Alan Titus, representing Artichoke Joe's, at the public hearing on August 23, 2007 stated that: Form DGC-APP. 006 sets the period of time for the release of information at 24 months. There is no justification for this intrusion into an applicant's privacy. Renewal applications are acted upon within 120 days. There is no reason for the release to be in effect after action on the application.

Response: This comment was accepted in part.

Form DGC-APP. 006 as currently incorporated by reference into the CCR, states in part:

"This release form shall be valid until the earlier of the following events: 1) Twenty-four (24) months from the date of execution; or 2) Until the background investigation is concluded."

In the original July 2007 proposal, the above-quoted paragraph in form DGC-APP. 006 would have been replaced with the following:

"This release form shall be valid for 24 months from the date of execution."

In substance, the proposed regulation would have retained the 24 month validity period while deleting the alternative open-ended "until the background investigation is concluded" language. The Division reports that background investigations frequently take more than 120 days to complete due to workload, slow responses from applicants, etc. Further, once these background investigations are completed and the Division makes its recommendation before the Commission, Commission members may have questions that can only be answered through further research or investigation of the applicant's background. These factors dictate that the validity period for the release of information extend beyond 120 days. However, the Division reports that rarely is it necessary for this release to be valid for any longer than 12 months, as the Commission usually takes action on a license application well within a one-year period.

As a result, the Commission and the Division have revisited this issue, determining that a 12-month validity period meets program needs.

Accordingly, we proposed in the third 15-day change to shorten the validity period from 24 to 12 months. The net change to form 006 would be to eliminate the open-ended “Until the background investigation is concluded”, and to reduce the “Twenty-four (24) months from the date of execution” to 12 months from the date of execution.

Accordingly, the revision date for form DGC-APP. 006 that is referenced in section 12342(a)(10) was changed to read: 03/08. Conforming changes were also made to the revision date for form DGC-APP. 006 as stated on Division forms DGC-APP- 015A, 015B, 015C and 016A. As a result, the revision dates for those forms as stated in section 12342(a)(3), (4), (5), and (6) were also changed to read: 03/08.

3. These regulations propose to add section 12340(b) to Chapter 6 that would prohibit a person from being a key employee without a key employee license.

On August 3, 2007, the Commission issued a Notice of Proposed Rulemaking that proposed an interim status for key employees while their license application is pending.⁵¹ This interim status allows a person holding a valid work permit or gambling license to assume a key employee position, provided that within 30 days of assuming the key employee position, they submit specified key employee license applications and fees to the Commission. This regulatory action, which establishes section 12347, was filed with the Secretary of State on November 21, 2007, and became effective on January 1, 2008.

As a result of this recently adopted regulation (§12347), it was necessary to make a non-substantive change to these proposed regulations that would insure that proposed section 12340(b) is not in conflict with section 12347. This change would also recognize a similar provision, Business and Professions Code section 19883, which allows key employees of corporate owner-licensees to work pending disposition of their application, provided that they apply for a key employee license within 30 days of becoming a key employee.

4. These changes would correct a reference error in proposed section 12335(a). The “(b)” following the reference to section 12002 has been deleted, as this reference applies to all of section 12002.

⁵¹ California Code of Regulations, Title 4, section 12347, established in rulemaking file # CGCC-GCA-2007-R-4 (OAL Notice # Z-07-0720-02)

5. As part of this third 15-day change, reference sections were changed as follows:

- Business and Professions Code section 19855 was added to section 12340.
- Business and Professions Code section 19954 was added to section 12357.
- Business and Professions Code section 19876 was deleted from section 12342 as a reference section, as section 12342 no longer applies to license renewals.

6. Section 12342(a) lists the various forms that are required when applying for a state gambling license or key employee license. The following forms were amended by these changes, and their revision dates as stated in section 12342(a) were changed accordingly. The details regarding the amendments to these forms are as follows:

- Application for State Gambling License, CGCC-030 (Rev. 03/08)
- Application for Gambling Establishment Key Employee License, CGCC-031 (Rev. 03/08)

As a result of the changes made to forms DGC-APP-015A, 015B, 015C, 016A and 143, the revision dates for these forms, as stated on forms CGCC-030 and/or 031, were amended to read “03/08”.

Accordingly, the revision dates for forms CGCC-030 and CGCC-031 were changed as stated in #1 above.

- Gambling Establishment Owner Applicant-Individual Supplemental Background Investigation Information, DGC-APP-015A (Rev. 03/08)

The redundant phrase “and location” was deleted in section 8 of form 015A.

The revision dates for forms DGC-APP. 005, 008, 011 and 012 as referenced on form 015A were corrected to that which is currently authorized by regulation.

The revision date for form DGC-APP. 006 as referenced on form 015A was amended to read “03/08”.

Accordingly, the revision date for form DGC-APP-015A as referenced in section 12342(a)(3) was changed to read “03/08”.

- Gambling Establishment Owner Entity Supplemental Information for State Gambling License, DGC-APP-015B (Rev. 03/08)

The “Remunerations” section (#4) on form 015B was revised by requesting that those remunerations totaling more than \$50,000 be reported. This reporting threshold was changed to align form 015B with existing law. Business and Professions Code sections 19880(d)(6) and 19890(e)(6) require an applicant to declare any remuneration in excess of \$50,000.

The revision dates for forms DGC-APP. 005 and 008 as referenced on form 015B were corrected to that which is currently authorized by regulation.

The revision date for form DGC-APP. 006 as referenced on form 015B was amended to read “03/08”.

Accordingly, the revision date for form DGC-APP-015B as referenced in section 12342(a)(4) was changed to read “03/08”.

- Gambling Establishment Supplemental Information for State Gambling License, DGC-APP-015C (Rev. 03/08)

An entry for the “Name(s) of Proposed Game(s)” was reinstated into section #2 of form 015C. Since the Division has the authority to approve a controlled game,⁵² a listing of the proposed games to be played is necessary at this stage of the application process.

A typographical error was corrected in section #3 of form 015C.

The “Remunerations” section (#7) on form 015C was revised by requesting that those remunerations totaling more than \$50,000 be reported. This reporting threshold was changed to align form 015C with existing law. Business and Professions Code sections 19880(d)(6) and 19890(e)(6) require an applicant to declare any remuneration in excess of \$50,000.

⁵² Business and Professions Code, subdivision (g) of section 19826

The revision dates for forms DGC-APP. 005 and 008 as referenced on form 015C were corrected to that which is currently authorized by regulation.

The revision date for form DGC-APP. 006 as referenced on form 015C was amended to read “03/08”.

The statement “initial and renewal applications” in section #10 was deleted when referencing the need for a chips-in-use account statement, since form 015C would now apply only to initial license applications.

Schedule E of form 015C requests the applicant to “List any direct or indirect interest held in real property by yourself, your spouse, or your dependent children.” Since form 015C applies to a business entity, this language was revised to read “List any direct or indirect interest held in real property”.

Schedule F of form 015C requests a gambling license applicant to enter the “Account Number” for art collections, coin collections, antiques and automobiles. Since such assets likely don’t have account numbers, this language was amended to read “Description (e.g., serial numbers, VIN numbers)”.

Accordingly, the revision date for form DGC-APP-015C as referenced in section 12342(a)(5) was changed to read “03/08”.

- Gambling Establishment Key Employee Supplemental Background Investigation Information, DGC-APP-016A (Rev. 03/08)

An entry for the applicant’s residence address was reinstated into section #1 of form 016A. The deletion of the applicant’s residence address on previously noticed versions of this form was in error.

Section #1 of form 016A was also revised to include the name of the supervisor of any family members who work in a California gaming facility. The name of the supervisor is necessary so that Division staff have a contact point at the gaming facility from which to verify the duties of the family member.

Even though revisions to sections 7 and 8 were included in past notices for these regulations, some of the revised text was not noticed properly. That is, some of the new text was not underlined as an addition to the form. As a result, these additions to sections 7 and 8 were displayed in this third 15-day change in double underline format.

Section #8 of form 016A was revised to include the name of any business entity with which the applicant is associated, rather than just a corporation or partnership. This change would require other entities, such as limited liability companies, to be included in this section of form 016A. An entry for more than one business entity was also reinstated into section #8 of form 016A.

A grammatical error was corrected in section #11 of form 016A.

The revision date for form DGC-APP. 006 as referenced on form 016A was amended to read “03/08”.

An error was corrected which failed to state deleted language in previously noticed versions of Schedule B of form 016A.

Accordingly, the revision date for form DGC-APP-016A as referenced in section 12342(a)(6) was changed to read “03/08”.

- Trust Supplemental Background Investigation Information, DGC-APP-143 (New 03/08)

The revision dates for forms CGCC-030, DGC-APP-015A and DGC-APP. 006, as stated on form 143 were amended to read “03/08”.

Accordingly, the revision date for form DGC-APP-143 as referenced in section 12342(a)(8) was changed to read “New 03/08”.

- Authorization to Release Information, DGC-APP. 006 (Rev. 03/08)

The reprint of Business and Professions Code 19828 on page three of form 006 was updated with new language from recently enacted legislation.⁵³

⁵³ Senate Bill 82 (2007 Stat. Ch. 176)

Accordingly, the revision date for form DGC-APP. 006 as referenced in section 12342(a)(10) was changed to read “03/08”.

- Instructions to Applicant’s Spouse, DGC-APP. 010 (Rev. 03/08)

Since form DGC-APP. 007 is being repealed by these proposed regulations, these changes deleted any reference to it on form DGC-APP. 010. Since these regulations amend forms CGCC-030, CGCC-031, DGC-APP-015A and DGC-APP-016A, conforming changes were also made to form DGC-APP. 010, where references are made to these other forms.

Accordingly, the revision date for form DGC-APP. 010 as referenced in section 12342(a)(17) was changed to read “03/08”.

- Instructions to Applicants, DGC-APP. 007 (Rev. 12/04)
- Renewal Supplemental Information for State Gambling/Key Employee License and Instructions to Renewal Applicants, DGC-APP. 017A (Rev. 12/04)

Even though the repeal of forms DGC-APP. 007 and 017A was included in past notices for these regulations, the incorrect versions of these deleted forms were displayed. As a result, the correct versions of these deleted forms were included in this third 15-day change.

7. These changes deleted obsolete language from section 12345(a) relating to the need for supplemental information upon license renewal, as required by section 12342. This supplemental information is no longer required for a renewal application, and section 12342 would no longer apply to license renewals.

8. As part of the original notice for these proposed regulations, as published on July 6, 2007, paragraphs (2), of subsections (a), of both sections 12358 and 12359 were amended to cause the Commission to accept payment of both an application fee and a Division review deposit when the owner licensee of a gambling establishment applies for additional tables, on a temporary or permanent basis. To facilitate the application for additional tables, the applicable of the following two forms are submitted to the Commission:

- Request for a Certificate to Operate Additional Tables on a Temporary Basis, CGCC-024 (Rev. 01-07)
- Application for Additional Authorized Permanent Tables, CGCC-027 (Rev. 07-06)

These forms currently request the applicant to make fees and deposits payable to the Commission and to the Division separately. These changes amended these forms so that the applicable fees and deposit could both be payable directly to the Commission. Accordingly, sections 12358(a)(1) and 12359(a)(1) were amended by these changes to reflect a revision date of 03/08 for forms CGCC-024 and CGCC-027.

During the third 15-day change period, the Commission received a written comment from Mr. Alan Titus, representing Artichoke Joe's. The following summarizes and responds to Mr. Titus' comment:

1. The instructions language on page 2 of Division form DGC-APP-143 should make it clear that licensing must occur before a trust distribution can be made.

Response: This comment was rejected. The third 15-day change made to this section of form DGC-APP-143 related to a use of the words "distribution" vs. "income". Specifically, the word "income" was replaced with the word "distribution". Another sentence that used the word income was also deleted from the form. This change was made in response to comments received during the second 15-day change period that suggested the form utilize words that are more commonly used when referring to trusts, namely "distribution" rather than "income". This most recent comment did not object to the substance of this change. Instead, this new comment relates to the timing of the distribution, that is whether it occurred before or after the licensing of the trust. This comment is not germane to these third 15-day changes. A response to this comment is not required because the comment is not relevant to the Commission's proposed changes to these regulations.⁵⁴

Even though not required to do so, the Commission offers the following response to this comment:

The Commission and the Division are currently involved in a complex review of numerous trusts that own gambling establishments. These

⁵⁴ Government Code, subdivision (c) of section 11346.8 (final sentence)

licensees have responded to the Division's request for information regarding their trust, and are awaiting a determination from the Division and the Commission as to the need to license certain parties of the trust, such as the beneficiary or the trustor. The Act defers this decision to the discretion of the Commission.⁵⁵ This is not a clarity issue, but rather one of policy. If the Commission were to determine at this time that a beneficiary must be licensed before a distribution can occur, undue hardship could be inflicted upon the beneficiaries in these trusts that are currently under review. Such regulatory action could cut off all distributions to these beneficiaries before the Division has concluded its investigation and made its licensing recommendation to the Commission. These licensees are working with the Commission and the Division in good faith. It would be inappropriate at this time to create a regulation that imposes such unnecessary hardships.

Finally, this issue involves a discretionary policy determination by the Commission. Notwithstanding the apparent misunderstanding of the law, which is reflected in this comment, such policy determinations are not subject to review by the Office of Administrative Law (OAL).⁵⁶

Required Determinations

Local Mandate: These regulations do not impose a mandate on local agencies or school districts.

Reasonable alternatives to the proposed regulations and reasons for rejecting those alternatives: The Commission is not aware of any reasonable alternatives that would as effectively achieve the regulatory purpose of establishing a two-year license term for gambling licenses and key employee licenses, the regulatory purpose of standardizing trust application procedures, or any of the other elements of this proposal.

⁵⁵ Business and Professions Code, subdivision (e) of section 19852

⁵⁶ See Government Code section 11349.1(c) (regulations adopted by OAL shall ensure that it does not substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations) and the OAL necessity regulation, Title 1 CCR section 10(a) (in reviewing rulemaking record for compliance with the necessity requirement, OAL shall not dispute the decision of a rulemaking agency to adopt a particular regulatory provision when the information provided is adequate to support one more alternative conclusions).

Reasonable alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses: The Commission is not aware of any reasonable alternative that would lessen any adverse impact on small businesses.

Incorporation by Reference: These regulations incorporate by reference forms CGCC-030 and 031 in sections 12342(a), 12343(a)(1), 12344(a)(1) and 12345(a)(2), forms DGC-APP-015A, 015B, 015C, 016A, 143, DGC-APP. 006, DGC-APP. 010 and IRS 4506-T in section 12342(a), and form CGCC-028 in section 12357(c). The incorporation of these forms by reference is appropriate, since publishing these documents in the California Code of Regulations would clearly be cumbersome, unduly expensive, impractical and unnecessary. These documents each consist of multiple pages of text, tables and charts. They are designed to be completed electronically, then printed and mailed to the Commission. It is unnecessary to print this information in the text of the regulation itself. These forms are available for viewing on the Commission's website, and are also available to anyone upon request to the Commission. These forms were also available for review throughout this rulemaking process.

Alternatives Considered: No alternative considered by the Commission would be more effective in carrying out the purpose for which these regulations are proposed or would be as effective and less burdensome to affected private persons than these regulations.

Impact on business: The Commission has made a determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.